

RECEIVED

DOCKET FILE COPY ORIGINAL SEP - 2 1997

Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band

PR Docket No. 93-144
RM-8117, RM-8030, RM-8029

Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services

GN Docket No. 93-252

Implementation of Section 309(j) of the Communications Act - Competitive Bidding

PP Docket No. 93-253

To: The Commission

**JOINT PETITION FOR
RECONSIDERATION/CLARIFICATION
OF THE SECOND REPORT AND ORDER**

Entergy Services, Inc. ("Entergy"), and Delmarva Power ("Delmarva"), through undersigned counsel and pursuant to Section 1.429^{1/} of the Commission's rules, submit this Petition for Reconsideration/Clarification of the Federal Communications Commission's Second Report and Order ("Second R&O" or "Order"), FCC 97-223, released July 10, 1997, in the above-captioned proceedings.

^{1/} 47 C.F.R. § 1.429.

No. of Copies rec'd
List ABCDE

I. INTRODUCTION

1. On July 10, 1997, the Federal Communications Commission ("Commission" or "FCC") released the Second R&O in the above captioned proceedings. The Order establishes technical and operational rules for the General Category and Lower 800 MHz channels (collectively, the "lower 230 channels"). The Order establishes, among other things, geographic licensing and competitive bidding for mutually exclusive applications, and details the rights of incumbent licensees in the lower 230 channels.

2. Entergy and Delmarva are each licensees of non-commercial facilities using the lower 230 channels. Entergy, an electric utility holding company, operates an extensive land mobile radio system licensed in the 800 MHz band to provide critical communications throughout its service territory, which includes Louisiana, almost all of Arkansas, a portion of Texas and the western half of Mississippi. In developing its 800 MHz land mobile radio system, Entergy has secured channels from the General, Business, and Industrial/Land Transportation Categories. Because the General Category channels are the subject of this Second R&O, this proceeding directly impacts Entergy.

3. Delmarva is a utility providing electric power across 6,700 square miles of service territory in Delaware, Maryland and Virginia. In order to facilitate its provision of safe, efficient and reliable electricity to its customers, Delmarva has implemented an extensive telecommunications network, which includes a private 800

MHz system employing General Category and Industrial/Land Transportation channels. This system is critical to Delmarva's utility operations; it makes possible the efficient dispatch of utility personnel in times of emergency, as well as during routine inspection and maintenance. Because of the critical importance of Delmarva's utility operations within its service territory, the integrity of its 800 MHz system is of extraordinary importance to the public welfare of the region. Accordingly, the instant proceedings have a direct impact on Delmarva's 800 MHz system.

II. RECONSIDERATION/CLARIFICATION REQUESTED

4. By this Petition, Delmarva and Entergy request that the FCC reconsider/clarify its rules in three areas. First, Delmarva and Entergy ask the Commission to reconsider/clarify its rules regarding the conversion of site-specific licenses into geographic licenses. Specifically, the Commission should, in the interest of efficient spectrum use, permit incumbent licensees that convert their site-specific licenses to geographic licenses to provide service to areas which cannot be served by any other party due to the Commission's co-channel protection rules. Second, Delmarva and Entergy request that the FCC reconsider/clarify eligibility for Lower 80 channel EA licenses and permit both private and commercial services to operate on these channels. Last, Delmarva and Entergy request that the Commission reconsider/clarify the distinctions between private and commercial service regarding

construction requirements, partitioning, disaggregation, and the ability to change between PMRS or CMRS as the market dictates.

A. Converting Site-Specific Licenses to Geographic Licenses.^{2/}

5. The Second R&O allows licensees to combine their site-specific licenses into a single license for the "contiguous and overlapping" contour^{3/} of the licensee's stations which are constructed and in operation.^{4/} This geographic license is awarded based on a one-time filing of certain information regarding "external base station sites."^{5/} Although the First Report and Order in these proceedings^{6/} specifically indicates that for the Upper 200 channels, the FCC will require evidence that "by operation of our rules, no other licensee would be able to use these channels within this geographic area,"^{7/} there is no such requirement in the Second R&O for

^{2/} Unless otherwise specified, the use of the terms "geographic license" and "geographic licensee" refers to site-specific licenses converted to geographic licenses.

^{3/} This contour is the licensee's 18 dBu contour if the licensee has the consent of all affected parties; otherwise, its 22 dBu contour establishes this boundary.

^{4/} Second R&O at ¶ 72.

^{5/} Id.

^{6/} FCC 95-501, released December 15, 1995.

^{7/} Id. at ¶ 88.

the General Category and Lower 80 channels. Accordingly, the following issues warrant clarification and/or reconsideration:

1. **Boundaries of Geographic Licenses.** The FCC is requested to reconsider/clarify whether white space unusable by any other party may be included within a geographic license.

6. In cases where an incumbent licensee can demonstrate that, by operation of the Commission's co-channel interference protection rules, areas of white space will be unusable by any other party, the incumbent licensee should be permitted to include such white space within its geographic license. If an incumbent licensee is prohibited from providing service to this white space, i.e., if such white space cannot be included within the incumbent licensee's geographic license, geographic licensees will be unnecessarily limited in modifying their facilities and customers within that white space will be unnecessarily denied service. On the other hand, if this "trapped" white space is included within the geographic license, it could be used by incumbents without any reduction of an EA winner's usable space. Efficient use of spectrum requires that geographic licensees be permitted to modify their facilities to cover this white space.

2. **Authorized But Not Yet Constructed Internal Stations.** The FCC is requested to reconsider/clarify whether the contours of authorized, but not yet constructed, stations within the geographic area license are considered part of the geographic

license, provided that the specific station's construction deadline has not passed.

7. Authorized but not yet constructed facilities within a geographic licensee's external contour should be considered part of the geographic license, provided that the specific station's construction deadline has not passed (e.g., where a station is covered by slow growth implementation). Including such facilities within the geographic license will permit the geographic licensee to efficiently use the unconstructed station's coverage area as an integrated part of the geographic license area without compelling premature construction. This clarification merely gives effect to extended implementation authority the FCC has already granted for such facilities.

B. Eligibility for Lower 80 Channels.

8. The First Report and Order restricted participation in the auction for General Category channels to SMR operators.^{8/} In the Memorandum Opinion and Order,^{9/} however, the Commission determined that it would allow non-SMRs to continue to be eligible to license General Category licenses. The FCC is requested to reconsider/clarify that non-SMRs are eligible for EA licenses for the lower 80 channels and that such channels can be used for PMRS. Given that the lower 80

^{8/} Id. at ¶ 127.

^{9/} FCC 97-224, released July 10, 1997, at ¶ 101.

channels will be licensed by competitive bidding, and the Commission's reliance on auctions to award spectrum to those who value it most highly, non-SMRs should be permitted to obtain lower 80 EA licenses for PMRS.

C. PRMS/CMRS Status of EA Winners

9. Although the FCC determined on reconsideration that it would permit non-SMRs to license General Category channels, the regulatory requirements of the Second R&O are nonetheless largely couched in terms of Commercial Mobile Radio Service operations. As PMRS entities may license General Category channels on an EA basis, the following issues warrant clarification/reconsideration:

1. Construction Requirements for PMRS EA Winners.

The FCC is requested to reconsider/clarify that the construction of PMRS facilities counts toward EA winners' construction requirements.

10. The Second R&O's construction requirements for EA winners in the General Category and Lower 80 channels are defined with reference to 47 C.F.R. § 90.685(b), which pertains to SMR facilities. The FCC is requested to clarify that PMRS licensees that are EA winners can meet their construction requirements based upon the same standards applied to EA winners providing CMRS: by providing coverage based on population or the "substantial service" test.

2. PMRS Partitioning and Disaggregation. The FCC is requested to reconsider/clarify that the geographic partitioning

and spectrum disaggregation provisions apply to PMRS licensees.

11. As set forth in the Second R&O, the partitioning and disaggregation provisions appear to apply only to SMRs. There is no mention of PMRS EA winners. In order to promote vigorous and efficient use in the General Category channels, the FCC is requested to clarify that PMRS EA winners have the same right to partition and disaggregate as do CMRS EA licensees.

3. Conversion Between Private and Commercial Services. The FCC is requested to reconsider/clarify an EA winner's ability to change between private and commercial service.

12. The Second R&O indicates that General Category EA winners will be classified as PMRS or CMRS based upon the nature of the service they provide. Delmarva and Entergy request that the FCC reconsider/clarify that EA winners and incumbents can change private to commercial service, and vice-versa, in response to evolving communications needs. EA winners should be permitted to convert existing site-specific licenses to CMRS and General Category EA licensees should be permitted to simultaneously operate both PMRS and CMRS within the EA.

III. CONCLUSION

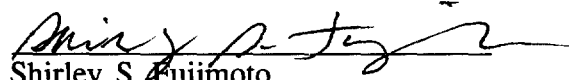
WHEREFORE, THE PREMISES CONSIDERED, Entergy Services, Inc. and Delmarva Power urge the Federal Communications Commission to consider this

Petition for Reconsideration/Clarification of the Second Report and Order and to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

ENTERGY SERVICES, INC.
DELMARVAPOWER

By:



Shirley S. Fujimoto

Daniel R. Ball

McDermott, Will & Emery
1850 K Street, N.W.
Washington, D.C. 20006
202/887-8000

Their Attorneys

Dated: September 2, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 1997, I caused true and correct copies of the foregoing JOINT PETITION FOR RECONSIDERATION/ CLARIFICATION OF THE SECOND REPORT AND ORDER to be served via hand delivery on:

William F. Caton (Original and 4 Copies)
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

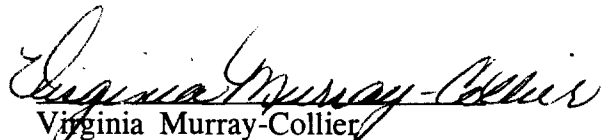
Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

Daniel Phythyon, Director
Office of Legislative & Intergovernmental Affairs
Federal Communications Commission
1919 M Street, N.W., Room 808
Washington, DC 20554


Virginia Murray-Collier